

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE:

**AT&T COMMUNICATIONS OF THE SOUTH
CENTRAL STATES, INC.'S PETITION FOR THE
ESTABLISHMENT OF AN INDEPENDENT THIRD
PARTY TESTING PROGRAM OF BELL SOUTH'S
OPERATIONAL SYSTEMS**

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Docket No. 99-00347

To the Authority:

**COMMENTS OF
INTERMEDIA COMMUNICATIONS INC.**

INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), by its undersigned counsel, and pursuant to the Tennessee Regulatory Authority's (the "Authority") Notice,¹ hereby respectfully submits its comments in this proceeding. As more fully discussed below, Intermedia fully concurs with AT&T Communications of the South Central States, Inc.'s ("AT&T") petition to convene a proceeding to initiate an independent third party testing program of BellSouth's operations support systems ("OSS").

¹ Notice, Docket 99-00347 (rel. May 19, 1999).

I. INTRODUCTION

In the *Local Competition Order*,² the Federal Communications Commission ("FCC") concluded that the provision of access to OSS falls squarely within an incumbent local exchange carrier's ("ILEC") duty under Section 251(c)(3) of the federal Telecommunications Act of 1996 (the "1996 Act") to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, as well as its duty under Section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.³

In a series of decisions disposing of BellSouth's applications for in-region, interLATA authority in Louisiana and South Carolina, the FCC concluded that BellSouth's provision of access to its OSS was deficient in many significant respects.⁴ Most recently, in *Louisiana II*, the FCC concluded that BellSouth failed to fully satisfy the requirements of Section 271(c)(2)(B) of the 1996 Act because, among other things, BellSouth was unable to demonstrate that its OSSs enable other carriers to connect electronically to its pre-ordering and ordering functions, thus

² *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*).

³ *Local Competition Order*, 11 FCC Rcd at 15742.

⁴ See, e.g., *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order (rel. Dec. 24, 1997); *Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order (rel. Feb. 4, 1998); *Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order (rel. Oct. 13, 1998) (*Louisiana II*).

placing those carriers at a competitive disadvantage relative to BellSouth's own retail operations.⁵

Likewise, the FCC determined that BellSouth was unable to demonstrate that it provides nondiscriminatory access to OSSs for the resale of retail telecommunications services.⁶

Many months after *Louisiana II*, there has been little, if any, indication that significant progress has been made by BellSouth in this area. The issue has been litigated and relitigated, and workshops after workshops ostensibly have failed to produce a satisfactory result. Consequently, years after the passage of the 1996 Act, the pace of local exchange competition in Tennessee and elsewhere remains in perpetual slow motion.

The situation is not hopeless, however, but something must be done now. Intermedia believes that significant progress in the provision of access to OSSs can be encouraged and, perhaps even accelerated, with the initiation of a carefully designed third party testing program. Such a program can, and has been proven to, trigger responsive remedial actions from the incumbents. New York and Pennsylvania are a case in point. Accordingly, Intermedia fully supports AT&T's suggestion that the Authority convene a proceeding for the purpose of initiating independent third party testing of BellSouth's OSSs.

II. COMMENTS ON THE PROPOSED PROCEDURE AND COSTS

Intermedia generally supports AT&T's proposed procedure and minimum requirements. In particular, Intermedia concurs with AT&T that the development, testing, and monitoring process must be performed by an independent, full knowledgeable third party, who will be selected by the

⁵ *Louisiana II*, at 10.

⁶ *Id.* at 14.

parties under the Authority's supervision. Although Intermedia does not suggest a specific third party who will perform the independent test, Intermedia notes that KPMG Peat Marwick either has served or has been appointed to serve in that capacity in New York, Pennsylvania, and Massachusetts.⁷ In any event, the entity ultimately selected to perform the test must not, in any way, be affiliated with BellSouth.

In addition to those already suggested by AT&T, Intermedia offers the following recommendations or enhancements to AT&T's suggestions:

- ***Preparation of a Detailed Plan.*** AT&T suggests that the independent third party selected should prepare a detailed plan for a comprehensive test of BellSouth's OSS. AT&T recommends also that the parties be given the opportunity to comment on the plan. Intermedia fully embraces the concept of allowing the parties to provide input to the plan. Intermedia believes, however, that the parties' input should be solicited *before* and *after* the plan is created. Allowing the parties to submit their input prior to the actual drafting of the plan will ensure that the independent third party is fully aware of the competing carriers' concerns even before the development of the plan is set in motion. This will also help avoid

⁷ See, e.g., *Contract for Evaluation and Testing of Bell Atlantic PA Operations Support Systems*, Docket No. M-00991228, Order (Pa. PUC); *Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996*, CASE 97-C-0271 (NY PSC).

potentially significant changes to the plan once it is drafted. Comments from interested parties can be solicited through workshops or written submissions.

- ***Test Scenarios.*** Intermedia concurs with AT&T that the plan must be carefully developed to take into consideration all possible real world and hypothetical scenarios. To ensure that all potential scenarios are addressed, competing carriers must be given an opportunity to provide test scenarios that meet their unique requirements. Similarly, in addition to those services and network elements mentioned by AT&T, the plan also should test the capability of the OSS to handle the ordering, provisioning, billing, and maintenance of Enhanced Extended Links or EELs.⁸ The ability of BellSouth's OSS to handle EELs is particularly critical to competing carriers who provide advanced data services and voice over data, such as Intermedia.
- ***Transparency of Interaction with BellSouth.*** In order to maintain the integrity of the process, any communications between BellSouth and the independent third party should be carefully documented. To this end, there should be a formal mechanism, similar to the FCC's *ex parte* rules, pursuant to which the independent third party is required to file with the Authority a summary of any and all

⁸ See, e.g., *Contract for Evaluation and Testing of Bell Atlantic PA Operations Support Systems*, Docket No. M-00991228, Order (Pa. PUC Apr. 29, 1999) (ordering that KPMG test EELs).

communications between it and BellSouth. Likewise, the parties should be served with a copy of any such filings.

- ***Retests.*** To the extent the initial test reveals deficiencies in the OSSs, the plan should include provisions for retests to determine whether (a) remedial actions have been instituted, and (b) the deficiencies have been fully resolved by the remedial actions taken. Likewise, the plan should have a carefully delineated timeline within which remedial actions must be completed and the affected components retested.
- ***Allocation of Costs.*** Intermedia agrees with AT&T that BellSouth should bear the costs of the independent third party testing. Because it is BellSouth's OSSs that are being tested to determine BellSouth's compliance with its nondiscrimination obligations, BellSouth is, for all intents and purposes, the cost-causer. Accordingly, pursuant to widely accepted principles of cost-causation, BellSouth appropriately should pay for the costs incurred in connection with the independent third party testing.

III. CONCLUSION

Problems with BellSouth's OSS have been numerous and notoriously pervasive. These problems have, to date, affected the ability of competing carriers to meaningfully compete with BellSouth. In order to promptly resolve issues concerning nondiscriminatory access to BellSouth's facilities and services, the Authority should immediately initiate a proceeding for the purpose of third party testing of BellSouth's OSS.

Respectfully submitted,

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Dated: May 26, 1999


CERTIFICATE OF SERVICE

I, H. LaDon Baltimore, certify that I have on this 26th day of May, 1999, caused to be served a copy of the foregoing Comments of Intermedia Communications Inc. upon the following parties, by first class U.S. mail, postage prepaid:

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